

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SUMMARY**
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING

May 17, 2007
Glendale, California

I. PUBLIC MEETING**CALL TO ORDER AND INTRODUCTIONS**

Chair MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., May 17, 2007, in the City Council Chambers of the Glendale City Hall, 613 East Broadway, Glendale, California.

A. ATTENDANCE**Board Members Present**

Chairman John MacLeod
Liz Arioto
Jonathan Frisch, Ph.D.
Bill Jackson
Art Murray

Board Members Absent

Jose Moreno
Steven Rank

Board Staff

Keith Umemoto, Executive Officer
David Beales, Legal Counsel
Michael Manieri, Principal Safety Engineer
Tom Mitchell, Senior Industrial Hygienist
Marley Hart, Staff Services Manager
Christina Witte, Executive Secretary

Division of Occupational Safety and Health

Steven C. Smith, Senior Industrial Hygienist

Others present

Tina Kulinouich, Fed/OSHA
Kevin Thompson, CAL/OSHA Reporter
Kevin Bland, RCA
Bruce Wick, CALPASC
Greg Peters, Hoddleston Crane
Colin Lavin, IREW 47
Salvador Gowzales
Linda Moyer, L3 Communications Power Magnetics
Janet Hendrickson, Phylmar Group

Richard Harris, RCA
Renee Pinel, WPHA
Eril Jenns
Lynne Formigli
Wende Carleson, CAL/OSHA
Luisa Gratz, ILWU #26
Wendy Holt, AmPTP

B. OPENING COMMENTS

Chair MacLeod stated that on May 4, 2007, Governor Schwarzenegger announced that Jose Moreno's term on the Board had been extended until 2010 and that the Governor appointed Mr. William Jackson to serve as a Management Representative. Chair MacLeod then administered the Oath of Office to Mr. Jackson and welcomed him to the Board.

Outgoing Board member Larry Gotlieb was presented with a plaque in appreciation of his service on the Board and he expressed his appreciation of his colleagues on the Board and Board staff. He particularly noted Keith Umemoto, Marley Hart, Mike Manieri, and Tom Mitchell and commended staff, especially noting that the detailed and balanced information to the Board resulted in unanimous votes. Ms. Arioto expressed gratitude for Mr. Gotlieb's contributions to the work of the Board.

Chair MacLeod opened the floor for public comment.

Bruce Wick with CalPASC commended Board staff for the work done on the proposed revisions to General Industry Safety Orders, Section 4324, Dust Collection Systems for Woodworking Machines and Equipment and stated that a second 15-day Notice of Proposed Modification might be needed.

C. ADJOURNMENT

Chair MacLeod adjourned the Public Meeting at 10:10 a.m.

II. **PUBLIC HEARING**

A. PUBLIC HEARING ITEM

Chair MacLeod opened the Public Hearing and introduced the first item on the agenda.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Chapter 4, Subchapter 7, Article 7
New Section 3324
Horizontal Sliding Gates

Mr. Manieri summarized the purpose and history of this proposal and noted that no written comments had been submitted to the Board. There was no public comment on this item.

Mr. Jackson asked how frequently the inspection by a qualified person, specified in subsection (c) of the proposal, was to take place. He wanted to ensure that both the regulated community and enforcement personnel understand what frequency of inspection is necessary in order to comply with that subsection. He suggested that the frequency of inspection be specified in the standard.

Mr. Manieri responded that there would be an initial inspection at the time of installation or after the gate has been modified to add the requisite gate stop. He stated that the proposal was intended to be a performance standard and that no frequency of inspection had been indicated. He stated that staff would consider modifying the proposal to specify the frequency of inspection.

Dr. Frisch asked whether the term "qualified person" was defined in the proposal. Mr. Manieri responded that the term is defined in the General Industry Safety Orders.

Chairman MacLeod announced the next item on the agenda:

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
 Chapter 4, Subchapter 7, Article 109
 Section 5189
 Process Safety Management—Definition of Retail Facility

Mr. Mitchell summarized the history and purpose of the proposal and noted that the Board has received no public comments to date.

Renee Pinel, the President and CEO of the Western Plant Health Association (WPHA), spoke in opposition to the proposed standard.

The fertilizer industry had direct discussions with OSHA when the PSM standards were implemented in the early 1990s. The objective was to specifically clarify what facilities would be excluded under PSM standards and what the definition of a retailer was and if farmers were end users. To further clarify these issues, WPHA requested and received from OSHA in writing clarifications that

“fertilizer facilities that store, blend, deliver, and sell either anhydrous ammonia or blended products and who derive more than 50% of their income from the sale of fertilizers to end users are retail facilities. A retailer who directly sells products to end use farmers from a number of individual outlets and maintains a central blending facility from which it supplies the individual outlets are retail facilities.”

These operations are described to OSHA as retail facilities because they sell all, most, or some of their products to farmers who are referred to repeatedly throughout the letter as end users.

The WPHA argues that there would be tremendous costs associated with this proposed action. WPHA estimates suggest that the initial implementation alone would cost approximately \$15,000 per facility, and most of these facilities are relatively small because they are operating in rural areas and serve groups of farmers within a certain geographic area. California agriculture will become less competitive with other states due to these costs, and this is already a major problem for the agricultural community. This proposal will have a pronounced financial impact on both WPHA members and growers in California.

WPHA would have engaged in discussions with staff any time in the last four years that these standards have been under development, if they had been contacted. However, the proposal was developed without any public input, and until the Notice was published, WPHA was completely unaware that it was moving forward. WPHA asks that an advisory committee consisting of Cal OSHA representatives and industry members and their representatives be convened to thoughtfully engage in a thorough discussion of the issues.

Dr. Frisch asked what quantities of anhydrous ammonia are being handled by WPHA members. Ms. Pinel responded that it varies.

Dr. Frisch asked whether there were facilities that handle in excess of 10,000 pounds of anhydrous ammonia. Ms. Pinel responded that there could be.

Dr. Frisch asked Mr. Mitchell about the definition of "small quantities" in the proposal. Mr. Mitchell responded that the wording in the proposal is from the NAICS definition. Staff tried to stay with that language and not select or exclude terms out of that language in order to remain consistent with that manual.

Dr. Frisch then stated that in his reading of the Division's Form 9 request, it appeared that the Division was referring to the SIC codes rather than the NAICS codes. He asked whether it would be of any value to specify in the proposal which NAICS codes and definitions are being used.

Dr. Frisch commented that there is a letter from federal OSHA in the file stating that the definition is consistent with the intent of the final rule's summary and explanation, and that representation appeared to be inconsistent with the testimony received from Ms. Pinel. He suggested that it might be a good idea to discuss this issue with the WPHA.

Mr. Jackson asked Ms. Pinel if she would be willing to share a copy of the letter referenced in here testimony with Board staff. She responded in the affirmative.

Chair MacLeod suggested that, even without a formal advisory committee, Board staff discuss the differences with Ms. Pinel. Mr. Mitchell indicated that that would be acceptable.

ADJOURNMENT

With no further comments, Chair MacLeod adjourned the Public Hearing at 10:32 a.m.

III. BUSINESS MEETING

Chair MacLeod called the Public Hearing of the Occupational Safety and Health Standards Board (Board) to order at 10:32 a.m., May 17, 2007, in the City Council Chambers of the Glendale City Hall, 613 East Broadway, Glendale, California.

A. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Jackson asked that OSHSB file number 06-V-187 be removed from the consent calendar for separate consideration.

MOTION

A motion was made by Mr. Murray and seconded by Dr. Frisch to adopt the consent calendar as modified. The matters remaining on the consent calendar were OSHSB File Numbers 07-V-002, 07-V-14, 07-V-015, 07-V-020, 07-V-021, 07-V-022, and 07-V-023. A roll call was taken, and all members present voted "aye." The motion passed.

MOTION

A motion was made by Mr. Murray and seconded by Dr. Frisch to adopt the proposed variance decision for OSHSB File Number 06-V-187.

Dr. Frisch asked what constitutes “authorized foot traffic” in Condition 6 of the proposed decision and whether there is a possibility of a change in foot traffic during operation that could occur without the operator’s knowledge.

Mr. Beales responded regarding evidence submitted at the hearing and the rationale for proposed safety devices. A roll call was taken, and all members with the exception of Mr. Jackson voted “aye.” Mr. Jackson recused himself from this vote. The motion passed.

Chairman MacLeod announced the next item on the agenda.

OTHER

1. Legislative Update

Mr. Beales stated that since May 4, 2007, there had been developments that pertained to the bills outlined in the Legislative Update in the Board packets. On May 14, AB 1467 regarding tobacco smoking, passed the Assembly. On May 10, AB 1711, regarding injury and illness reports, passed the Assembly. SB 783 by Senator Torlakson regarding amusement park rides has been amended to retain criminal sanctions and to replace “mechanical malfunction,” which is a term of art, with “major mechanical failure.”

2. Executive Officer’s Report

Mr. Umemoto stated that there was an advisory committee regarding diacetyl scheduled for May 18, 2007, which would be convened at the Division as a follow-up to the advisory committee in the fall. Board staff held an advisory committee meeting on May 9, 2007, regarding roll over protection and seat belt width.

He reminded the Board that the end of the fiscal year will be in approximately 45 days, and travel expense claims through May 2007 must be submitted as soon as possible. Claims for June should be submitted immediately following the Board meeting.

3. Future Agenda Items

Mr. Murray stated that the Board had been asking for an update on heat illness since last year. Five months should be sufficient time for someone to come back to the Board with some information. He asked Mr. Umemoto to contact the Division to schedule an update. He then asked Mr. Smith if he had any information. Mr. Smith responded that there would be an update at the next meeting.

Mr. Umemoto stated that Vicky Heza was unable to attend the meeting today to give an update on enforcement activities, and that absent a scheduling conflict, she would be on the agenda next month to present an enforcement update.

ADJOURNMENT

With no further comments, Chair MacLeod adjourned the Business Meeting at 10:41 a.m.